

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPLAINT OF AMERICAN POSTAL WORKERS  
UNION, AFL-CIO

Docket No. C2013-10

**OPPOSITION TO APWU'S MOTION FOR RECONSIDERATION**  
(March 14, 2014)

On February 27, 2014, the Postal Regulatory Commission (Commission) issued Order No. 2000, which granted the Motion to Dismiss the complaint of the American Postal Workers Union, AFL-CIO (APWU) filed by the United States Postal Service (Postal Service). On March 7, 2014, the APWU filed a Motion for Reconsideration of the Dismissal of APWU's Complaints Regarding Violation of 39 C.F.R. § 121.1 (Motion for Reconsideration) in which the APWU presented no new factual or legal argument to justify reconsideration. For the reasons set forth below, the Commission should deny the APWU's Motion for Reconsideration.

**Procedural Background**

On September 5, 2013, the APWU filed a complaint (Original Complaint) with the Commission alleging violations of 39 U.S.C. §§ 403(c), 3661, and 3691(b) and (d). On September 25, 2013, the Postal Service moved to dismiss the Original Complaint (Motion to Dismiss). On November 27, 2013, the Commission issued PRC Order No. 1892, which granted, in part, the Postal Service's Motion to Dismiss.<sup>1</sup> In PRC Order No. 1892, the Commission dismissed the APWU's claims regarding 39 U.S.C. §§ 403(c), 3661, and 3691(b), and deferred ruling on the Postal Service's Motion to Dismiss with

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<sup>1</sup> Order No. 1892, Order Granting, In Part, Motion to Dismiss and Holding Complaint in Abeyance Pending Further Action, PRC Docket No. C2013-10 (Nov. 27, 2013).

respect to the APWU's claim regarding section 3691(d), permitting the APWU to file additional information related to its claim.<sup>2</sup>

On December 13, 2013, the APWU filed its Amended Complaint with the Commission, which realleged violations of 39 U.S.C. § 3691(d). Pursuant to PRC Order No. 1892, the Postal Service submitted a response in further support of the Postal Service's Motion to Dismiss. On February 27, 2014, the Commission issued PRC Order No. 2000, granting the Postal Service's Motion to Dismiss and dismissing the remaining allegation regarding section 3691(d).<sup>3</sup> In PRC Order No. 2000, the Commission concluded that "[w]ithout harm or injury, claims of alleged service standard violations present no controversy for the Commission to hear under section 3662."<sup>4</sup> Since the APWU merely alleged service standard violations without identifying how it or its members were harmed or injured, the Commission dismissed these allegations.<sup>5</sup>

On March 7, 2014, the APWU filed a Motion for Reconsideration, asserting that PRC Order No. 2000 did not "address the gravamen" of the APWU complaints. In its Motion for Reconsideration, the APWU repeated its allegation that changes in the mail processing network have resulted in regular service standard violations. Rather than identifying specific harm or injury caused by these alleged violations, the APWU argued that these violations constitute harm in and of themselves.<sup>6</sup>

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<sup>2</sup> *Id.* at 16 and n.21.

<sup>3</sup> Order No. 2000, Order Dismissing Complaint, PRC Docket No. C2013-10 (Feb. 27, 2014) at 8. The Order dismissed the remaining allegations of the Original Complaint and the Amended Complaint in its entirety.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Motion for Reconsideration, PRC Docket No. C2013-10 (Mar. 7, 2014), at 8.

## Argument

The Commission has already considered—and deemed deficient—the APWU’s allegations regarding service standard violations on multiple occasions in this docket.<sup>7</sup> The APWU’s Motion for Reconsideration represents a third attempt by the APWU to raise the same allegations with the hope of a different result. The Commission should deny the Motion for Reconsideration because it provides no additional information to justify a different conclusion.<sup>8</sup> In fact, more than half of the APWU’s Motion for Reconsideration contains portions of the Original and Amended Complaints, merely cut and pasted into the document. Simply repeating what has already been said does not strengthen or supplement the APWU’s position. Moreover, the remaining portions of the Motion for Reconsideration are equally ineffective, providing no new factual or legal argument. Ultimately, the APWU still fails to identify any harm or injury resulting from the alleged service standard violations to constitute a controversy for the Commission to hear pursuant to section 3662. As such, there is nothing for the Commission to reconsider.

The APWU first raised the allegations in its Original Complaint,<sup>9</sup> and the Commission held that the APWU’s “general claims” and “anecdotal reports” regarding alleged service standard violations provided an insufficient basis for the Commission to

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<sup>7</sup> As explained by the Postal Service in its Motion to Dismiss, this docket is just one effort in a “series of labor relations complaints that seek to detail, or at least delay, the Postal Service’s Network Rationalization Plan.” United States Postal Service Motion to Dismiss the Complaint of the American Postal Workers Union, AFL-CIO (Motion to Dismiss), PRC Docket No. C2013-10 (Sept. 25, 2013) at 3.

<sup>8</sup> Motion for Reconsideration at 4-7. Moreover, the Postal Service notes that the APWU continues to rely inappropriately on portions of its Original Complaint, despite the fact that it filed an Amended Complaint, which supersedes the Original Complaint. See, e.g., 6 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1476, (2d ed. 1990) (“A pleading that has been amended under Rule 15(a) supersedes the pleading it modifies and remains in effect throughout the action unless it subsequently is modified.”).

<sup>9</sup> See, e.g., Original Complaint ¶¶ 21-22.

“conclude that the APWU has or has not raised material issues of fact or law.”<sup>10</sup> Instead of dismissing the Original Complaint in its entirety, however, the Commission provided the APWU a second opportunity to properly raise the allegations by supplementing the Original Complaint with additional information.<sup>11</sup> The Commission unambiguously required that the APWU identify “the harm alleged to be caused by [the alleged service standard] violations.”<sup>12</sup> Despite this explicit instruction, the APWU’s Amended Complaint again raised the same allegations without providing the requested specificity. As the Commission explained in PRC Order No. 2000, “[f]or claims involving violations of section 3691(d), harm or injury is an essential element. Without harm or injury, claims of alleged service standard violations present no controversy for the Commission to hear under section 3662.”<sup>13</sup> Like the APWU’s Original Complaint, its Amended Complaint failed “to identify any harm or injury resulted from the alleged service standard violations.”<sup>14</sup>

In its Motion for Reconsideration, the APWU asserts that the Commission did not address the “gravamen” of the APWU’s allegations, namely that the Postal Service “cannot meet” its service standards.<sup>15</sup> This assertion fails, as the APWU’s Amended Complaint made clear that that APWU believed that the Postal Service’s alleged service standard violations were “regular and systemic.”<sup>16</sup> Such assertions were dismissed because the APWU did not identify any harm or injury that resulted from the alleged

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<sup>10</sup> PRC Order No. 1892 at 15.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 16.

<sup>13</sup> PRC Order No. 2000 at 7 (internal citations omitted).

<sup>14</sup> *Id.*

<sup>15</sup> Motion for Reconsideration at 3.

<sup>16</sup> Amended Complaint ¶¶ 20-21; see *also* Original Complaint ¶ 61.

service standard violations, regardless of the “gravamen” of the allegations. If anyone has failed to address an essential point, it is the APWU that has declined to meet the Commission’s repeated invitation to show how the alleged violations have caused a concrete harm.

The APWU further asserts that “the inability of the Postal Service to deliver its mail in a timely manner is a harm in and of itself.”<sup>17</sup> This general assertion was made previously, and the Commission properly rejected it. The APWU must instead specifically show a concrete harm or injury for claims of alleged service standard violations, apart from the violations already in APWU’s complaint.<sup>18</sup> The alleged violations cannot constitute “harm in and of themselves.” Such circular assertions are insufficient to constitute the harm necessary to create a controversy.

Finally, the APWU asserts that the “APWU and other users of the mail are mailing time sensitive documents in reliance on the Postal Service’s service standards and . . . those documents are not being delivered in the time period prescribed in the service standards.”<sup>19</sup> The Postal Service notes that this unsubstantiated allegation was not raised in the APWU’s Amended Complaint. Had it been, however, much like the allegations dismissed in the Original Complaint and the Amended Complaint regarding instances where mail was allegedly delivered after the expected delivery day, this allegation does not constitute the specific harm necessary to justify its consideration as part of a section 3662 complaint case. As the Commission explained in PRC Order No. 2000, “reports of mail pieces arriving past the intended delivery time without

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<sup>17</sup> Motion for Reconsideration at 8.

<sup>18</sup> PRC Order No. 2000 at 7.

<sup>19</sup> Motion for Reconsideration at 8.

allegations of the harm or injury caused by such untimely delivery do not justify commencement by the Commission of a complaint proceeding.”<sup>20</sup> Instead, as the Commission identified, and consistent with its Rules of Practice and Procedure, such allegations of specific instances of service standard violations may be more appropriately “pursued as a rate or service inquiry under 39 C.F.R. part 3031.”<sup>21</sup>

### **Conclusion**

For the reasons set forth above, the Commission should deny the APWU’s Motion for Reconsideration as there is nothing to reconsider.

Respectfully submitted,

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March 14, 2014

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<sup>20</sup> PRC Order No. 2000 at 7.

<sup>21</sup> *Id.* at 7 n.11.